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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 Dario Raygoza,

9 Plaintiff,

10 vs.

11 Etelecare Global Solutions/Stream,

12 Defendant.
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No. CV-11-597-PHX DGC

ORDER

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15 Plaintiff filed a pro se complaint against Defendant in state court. Doc. 1-3.
16 Defendant removed the case to this Court. Doc. 1. For reasons that follow, the case will
17 be remanded.

18 Federal courts are courts of limited jurisdiction, “possess[ing] only that power
19 authorized by Constitution and statute[.]” *Kokkonen v. Guardian Life Ins. Co. of Am.*,
20 511 U.S. 375, 377 (1994). Pursuant to 28 U.S.C. § 1441, a defendant “may remove an
21 action to federal court based on federal question jurisdiction or diversity jurisdiction.”
22 *Hunter v. Phillip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009); *see* 28 U.S.C.
23 §§ 1331, 1332. Defendant’s notice of removal asserts both federal question and diversity
24 jurisdiction. Doc. 1 at 2.

25 “It is to be presumed that a cause of action lies outside the limited jurisdiction of
26 the federal courts and the burden of establishing the contrary rests upon the party
27 asserting jurisdiction.” *Hunter*, 582 F.3d at 1042 (citations omitted). As explained more
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1 fully below, Defendant has not met its burden.

2 **I. Federal Question Jurisdiction.**

3 The Court has subject matter jurisdiction over cases “arising under” federal law.
4 28 U.S.C. § 1331. Defendant notes that complaint alleges sexual harassment and
5 retaliation (Doc. 1-3 at 2), and that Plaintiff has filed a charge of discrimination with the
6 EEOC. Doc. 1 at 2. But nowhere does the complaint assert a claim under Title VII or
7 any other federal law.

8 It is well established that federal question jurisdiction exists only where the
9 “*complaint* establishes that the case ‘arises under’ federal law.” *Franchise Tax Bd. of*
10 *State of Cal. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 10 (1983) (emphasis added).
11 Stated differently, “[t]he federal question ‘must be disclosed upon the face of the
12 complaint unaided by the answer or petition for removal.’” *Takeda v. Nw. Nat’l Life Ins.*
13 *Co.*, 765 F.2d 815, 821 (9th Cir. 1985) (quoting *Gully v. First Nat’l Bank*, 299 U.S. 109,
14 113 (1936)). Because Plaintiff’s claims for sexual harassment and retaliation, as pled, do
15 not depend on resolution of any issue of federal law, the Court does not have subject
16 matter jurisdiction under 28 U.S.C. § 1331.

17 **II. Diversity Jurisdiction.**

18 Federal courts possess diversity jurisdiction “where the matter in controversy
19 exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . .
20 citizens of different States[.]” 28 U.S.C. § 1332(a)(1). The complaint does not demand a
21 dollar amount. *See* Doc. 1-3 at 2. When a plaintiff institutes a case in state court, “there
22 is a strong presumption that the plaintiff has not claimed a large amount in order to confer
23 jurisdiction on a federal court.” *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373,
24 375 (9th Cir. 1997) (citations omitted). Thus, “the removing defendant bears the burden
25 of proving by a preponderance of the evidence that the amount in controversy exceeds
26 [\$75,000].” *Id.* at 376; *see Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089,
27 1090 (9th Cir. 2003).

1 Because Plaintiff's annual salary at the time of his termination was approximately
2 \$25,000, Defendant asserts, "Plaintiff's recovery (including lost wages and emotional
3 distress damages) *could* exceed \$75,000." Doc. 1 at 2 (emphasis added). To meet its
4 burden, however, Defendant "must provide evidence establishing that it is 'more likely
5 than not' that the amount in controversy exceeds [\$75,000]." *Sanchez v. Monumental*
6 *Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996). That is, where "it is *unclear* what
7 amount of damages the plaintiff has sought, . . . then the defendant bears the burden of
8 actually proving the facts to support jurisdiction, including the jurisdictional amount."
9 *Gaus v. Miles, Inc.*, 980 F.2d 564, 566-67 (9th Cir. 1992) (emphasis in original). The
10 defendant bears the burden of proving such facts "in the removal petition itself." *Id.*
11 at 567. Defendant's assertion that the amount in controversy "could" exceed \$75,000,
12 without identifying "any specific factual allegations or provisions in the complaint which
13 might support that proposition, should provoke *sua sponte* remand[.]" *Id.* (citation
14 omitted).

15 **III. Remand Summary.**

16 Courts strictly construe the removal statute, 28 U.S.C. § 1441, against removal
17 jurisdiction. *Gaus*, 980 F.2d at 566. This strong presumption against removal means that
18 the defendant always has the burden of establishing that removal is proper, and federal
19 jurisdiction "must be rejected if there is any doubt as to the right of removal in the first
20 instance." *Id.* Defendant has failed to meet its high burden. The Court therefore will
21 remand the case to state court for lack of subject matter jurisdiction. 28 U.S.C. § 1447(c)
22 (the case shall be remanded if "at any time before final judgment it appears that the
23 district court lacks subject matter jurisdiction"); *see also Matheson*, 319 F.3d at 1090
24 (courts "have an ongoing obligation to be sure that jurisdiction exists"); *Fiedler v. Clark*,
25 714 F.2d 77, 78 (9th Cir. 1983) (courts "may dismiss *sua sponte* if jurisdiction is
26 lacking").

Dated this 26th day of May, 2011.

Daniel G. Campbell

David G. Campbell
United States District Judge